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UNIVERSAL ENTERTAINMENT CORPORATION
**Pro hac vice application forthcoming*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual; ARUZE
USA, INC., a Nevada corporation;
UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

Defendants.

CASE NO:

NOTICE OF REMOVAL

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2
3 PLEASE TAKE NOTICE that Defendants ARUZE USA, Inc. ("Aruze
4 USA") and UNIVERSAL ENTERTAINMENT CORP. ("Universal") (collectively
5 "Removing Defendants"), pursuant to 28 U.S.C. § 1446(a), hereby remove this action
6 from Department XI of the Eighth Judicial District Court of the State of Nevada in and
7 for the County of Clark to the United States District Court for the District of Nevada.
8 The removal of this case is based upon the following grounds:

9
10 **SUMMARY**

11 1. "A state-created cause of action can be deemed to arise under federal
12 law (1) where federal law completely preempts state law; (2) where the claim is
13 necessarily federal in character; or (3) where the right to relief depends on the resolution
14 of a substantial, disputed federal question." *See ARCO Environmental Remediation, LLC*
15 *v. Dep't of Health and Environmental Quality of the State of Montana*, 213 F.3d 1108,
16 1114 (9th Cir. 2000) (internal citations omitted).

17 2. All claims and causes in this matter should be removed to this Court
18 under 28 U.S.C. § 1441(b) because the issues raised on the face of the Complaint involve
19 a resolution of a substantial federal question that plays a significant role in the
20 proceedings. *See id.*

21 3. In particular, the Complaint filed by Wynn Resorts, Ltd ("Plaintiff")
22 "makes clear, at a minimum, the right to relief depends on the resolution of a substantial,
23 disputed federal question[s]" regarding the scope and interpretation of the Foreign
24 Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq.* *Herman v.*
25 *Salomon Smith Barney, Inc.*, 266 F. Supp. 2d 1208, 1211 (S.D. Cal. 2003).
26
27
28

PROCEDURAL HISTORY AND BACKGROUND

4. On or about February 19, 2012, Plaintiff filed an action in the Eighth Judicial District, Clark County District Court for the State of Nevada entitled *Wynn Resorts, Limited v. Kazuo Okada, Aruze USA, Inc., and Universal Entertainment Corporation*, Case Number A-12-656710-B.

5. Defendants Aruze USA and Universal were served with a summons and complaint on or about February 21, 2012. To date, Defendant Kazuo Okada ("Mr. Okada") has not been served with the summons or complaint and no Defendant has yet made an appearance in the state court action. A copy of all process and pleadings in the state court action are attached hereto as Exhibit A.

6. Plaintiff purports to bring claims against Mr. Okada for breach of fiduciary duty, and against Aruze USA and Universal for aiding and abetting breach of fiduciary duty. Plaintiff alleges that Mr. Okada breached his fiduciary duty by engaging in unlawful activities with foreign government officials at Plaintiff's properties in violation of the FCPA. Further, Plaintiff seeks declaratory relief against Mr. Okada, Aruze USA, and Universal for an order that it acted lawfully in finding that Aruze USA was not "suitable" as a Wynn Resorts stockholder. In essence, Plaintiff purports to (improperly) seek a judicial declaration confirming its conclusion that Defendants are "unsuitable" because they violated the FCPA.

7. To allege its breach of fiduciary duty claims, Plaintiff purports to rely on a report produced by Freeh Sporkin & Sullivan LLP ("Freeh Sporkin"). The Freeh Sporkin report, Plaintiff contends, provides *prima facie* evidence that Aruze USA and Mr. Okada violated the FCPA, 15 U.S.C. § 78dd – 2. Plaintiff attached the Freeh Sporkin report to its Complaint and incorporates it by reference.

****GROUND**s FOR REMOVAL**

8. “Any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the . . . defendants . . . to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the Plaintiff’s allegations will require the Court to determine important substantive questions arising under federal law. *See* 28 U.S.C. § 1331.

10. All three claims asserted by Plaintiff rely on the assertion that Plaintiff’s Board of Directors was presented with “evidence that Mr. Okada had made unlawful payments to foreign gaming regulators who could advance Mr. Okada’s business interest.” (Complaint (“Compl.” ¶ 1).)

11. The Complaint is replete with allegations concluding that purported federal FCPA violations placed him in violation of state law and/or justify the declaratory relief Plaintiff seeks under state law. (*See, e.g. id.* ¶ 58 (“Mr. Okada breaches his fiduciary duties by engaging in unlawful activities. . . .”); *id.* ¶ 66 (“Aruze USA and Universal “knowingly participated in Mr. Okada’s breaches by facilitating the . . . committing unlawful acts that undermine Wynn Resorts’ good reputation as well as its business and gaming licenses”)).

12. Removal is proper where the interpretation of the FCPA (*i.e.*, a federal question) plays “a significant role in the proceedings.” *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1212 (9th Cir. 1998) (removal of state-law claims, including breach of express and implied contract, breach of the covenant of good faith and fair dealing, gross negligence, intentional misrepresentation, negligent misrepresentation, and interference with economic relations, proper where viability of the state law claim hinged on determination of violation of federal question); *Herman*, 266 F. Supp. 2d at 1211 (removal of state law claim proper where duties allegedly breached was established by federal securities laws); *T&E Pastornio Nursery v. Duke Energy*

1 *Trading and Market, LLC*, 268 F. Supp. 2d 1240, 1247 (S.D. Cal. 2003) (removal of state
2 law claim proper where claims were premised in part on a violation of federal law).

3 13. Plaintiff's breach of fiduciary duty claim and aiding and abetting
4 breach of fiduciary duty claim rely on alleged FCPA violations as an *ipso facto* basis for
5 the conclusion that Mr. Okada breached his fiduciary duties owed to Plaintiff.

6 14. Plaintiff's declaratory relief claim seeking an order that Plaintiff
7 acted lawfully and in full compliance with its Articles of Incorporation to redeem Aruze
8 USA's shares is wholly predicated upon the findings in the Freeh Sporkin report.
9 (Compl. ¶ 76 ("following Freeh's presentation, the Board of Directors deliberated" and
10 voted to redeem Aruze USA's Wynn Resorts stock)).

11 15. Because Plaintiff's claims are predicated upon findings of violations
12 of federal law, and thus arise under federal law, this action is properly removed pursuant
13 to 28 U.S.C. § 1331.

14 UNIFORM INTERPRETATION OF THE FCPA

15 16. There is an important federal interest in the uniform interpretation of
16 the FCPA. The U.S. Department of Justice ("DOJ") has exclusive jurisdiction to
17 prosecute criminal violations of the FCPA. *See* 15 U.S.C. §§ 78dd-2(d)(1). Both the DOJ
18 and the U.S. Securities and Exchange Commission have authority to seek injunctive relief
19 to prevent bribery and recordkeeping violations of the FCPA. *Id.* at 78u(d)(1).

20 17. Courts recognize that the statutory language of the FCPA is
21 imprecise. *See United States v. Kay*, 359 F.3d 738, 743-44 (5th Cir. 2004) ("We agree
22 with the courts findings of ambiguity for several reasons. Perhaps our most significant
23 statutory construction problem results from the failure of the language of the FCPA to
24 give a clear indication of the exact scope of the business nexus element; that is, the
25 proximity of the required nexus between, on the one hand, the anticipated results of the
26 foreign official's bargained-for action or inaction, and, on the other hand, the assistance
27 provided by or expected from those results in helping the briber to obtain or retain
28

business.”); Mike Koehler, *The Façade of FCPA Enforcement*, 41 Geo. J. Int’l L. 907, 998 (2010) (recognizing that a significant difficulty in complying with the FCPA is that “several of [its] key elements are vague and ambiguous.”); James Doty, *Toward a Reg. FCPA: A Modest Proposal for Change in Administering the Foreign Corrupt Practices Act*, 62 Bus. Law 1233, 1239 (2007) (“Vagueness and ambiguity are the DNA of the FCPA . . .”).

18. Given the exclusive federal jurisdiction over criminal and injunctive relief for FCPA violations, and the potential for conflicting interpretations of the ambiguous statutory language, this Court should retain subject matter jurisdiction to ensure that the federal law relating to the FCPA is interpreted in a uniform manner.

JURISDICTION

19. This Court has removal jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1441.

OTHER PROCEDURAL REQUIREMENTS

20. Fewer than thirty (30) days have elapsed since service was effectuated upon Aruze USA and Univeral, and this Notice of Removal is timely. *See* 28 U.S.C. § 1446(b).

21. Pursuant to 28 U.S.C. § 1446(a), attached as Exhibit A is a copy of all process, pleadings, and orders served upon Removing Defendants in the state court action.

22. Removing Defendants and Mr. Okada all consent to the filing of this Notice of Removal.

23. Pursuant to 28 U.S.C. § 1446(d), Removing Defendants will serve a copy of this Notice of Removal on counsel for Plaintiff and will file a Notice of Filing of Removal with the Eighth Judicial District, District Court, Clark County, Nevada.

1 24. By filing this Notice of Removal, Removing Defendants do not
2 waive any defenses, including without limitation, lack of personal jurisdiction, improper
3 venue or forum, all defenses specified in Federal Rule of Civil Procedure 12, or any other
4 defense.

5 WHEREFORE, Removing Defendants remove the above-entitled action
6 from Department XI of the Eighth Judicial District Court of the State of Nevada in and
7 for
8 the County of Clark to the United States District Court for District of Nevada for the
9 reasons stated above, and/or for any other reasons the Court deems necessary and proper.
10

11 DATED: March 12, 2012.

12 Respectfully submitted,

13 LIONEL SAWYER & COLLINS

14
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